IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 3 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

COMM. OF C.EX.

Versus

ROOP TEXTILE MILLS

Appearance:

1. CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No. 3 of 2001
MS PJ DAVAWALA for Petitioner No. 1
MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 01/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Heard Ms PJ Davawala learned Standing Counsel for the applicant and Mr BT Rao learned counsel for the respondent - assessee.

2. This reference application is filed by the Commissioner of Central Excise, Ahmedabad under subsection (1) of Section 35(H) of the Central Excise Act, 1944 for directing CEGAT to refer the following question of law:-

"Whether the levy of penalty and confiscation under C.Ex. Act, 1944 was unlawful when Sec.3 (3) of the Additional duties Act is expressive enough to make all provisions of C. Ex. Act, and Rules applicable, if they are in relation to the levy and collection of duties of excise ?"

3. Ms PJ Davawala, learned Standing Counsel for the Department points out that an identical question came to be considered by another Division Bench of this Court in CECG Reference No.1 of 2001. After considering the decision of the Delhi High Court in Pioneer Silk Mills' case 1996 (67) ECR 131, by judgment dated 22-1-2002, the Division Bench held as under:-

"9.3 It will thus be seen that penalty provisions are an integral part of assessment and collection of duties of which the necessary adjuncts are confiscation and penalty without which the imposition of taxes will lack teeth and become ineffective. If power to impose penalty for violation of the obligation to pay additional duty of excise is excluded in respect of the goods enumerated in the First Schedule of the Additional Duties Act, then these taxation provisions would be reduced to a donation drive in respect of these very items for which duty of excise is also imposed under the Central Excise Act, 1944 and the Rules made thereunder and violation of which would entail both confiscation and penalty.

10. The provisions of penalties are devised to ensure that the excise regulations are enforced and the recovery of excise dues is secured. The process of collection of revenue involves enacting methods of collection. The procedure of assessment and collection are intertwined with confiscation and penalty, once violation of excise regulations is established,

as contemplated by the Rules imposing penalties. The object of the provisions to impose heavy penalties is to ensure that the revenue is protected against procrastination, carelessness or deceit which if practised on a large scale, would make collection of the taxes a difficult task.

11. For the above reasons, it is clear to us that all the provisions of the Central Excise Act, 1944 and the Rules made thereunder, including the provisions relating to confiscation and imposition of penalty contained therein, are applicable to the levy and collection of the additional duty of excise under section 3(1) of the Additional Duties of Excise Act, 1957 in the same manner as they already apply in relation to the levy and collection of such goods under the Central Excise Act, 1944 and Rules framed thereunder.

12. We accordingly hold that the provisions relating to confiscation and imposition of penalty contained in the Central Excise Act, 1944 and the Rules thereunder are applicable to man-made fabrics which are liable to additional duty of excise under the First Schedule of section 3(1) of the Additional Duties of Excise Act and are `excisable goods' mentioned in Schedule to the Central Excise Tariff Act, 1985, by virtue of incorporation by reference under section 3(3) of the Additional Duties Act, of all the provisions contained in the Central Excise Act, 1944 and Rules made thereunder.

The question referred to us is answered accordingly in favour of the Revenue and against the assessee. There shall be no order as to costs.

4. It is, thus, clear that this Court has already answered the question in favour of the revenue and the controversy is thus already concluded in favour of the revenue and against the assessee.

5. In view of the above, nothing further is required to be done by this Court except directing the Tribunal to rehear Appeal Nos.E/479/95-Bom and E/480/95-Bom of 1995.

6. Accordingly, the judgment dated 31-8-1999 of the

CEGAT in above numbered appeals is set aside and the Tribunal is directed to rehear the appeals in light of the law laid down by this Court in the aforesaid judgment dated 22-1-2002 in CECG Ref. No.1 of 2001.

It is clarified that this Court has not gone into the merits of the controversy about the quantum of penalty and the Tribunal will hear the parties de novo on the said question on the basis of the aforesaid law laid down by this Court.

7. The application accordingly stands disposed of with no order as to costs. Rule is made absolute to the aforesaid extent.

(M.S. Shah,J) (K.A. Puj,J)
zgs/-